

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for
Termination of Probation of:**)
)
)
)
GEBRE GOBEZIE, M.D.)
)
Physician's and Surgeon's)
Certificate No. A26738)
)
Respondent.)
_____)

File No. 09-1997-70603

DECISION

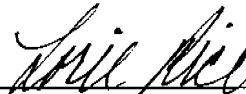
The attached Proposed Decision is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 8, 2004.

IT IS SO ORDERED November 8, 2004.

MEDICAL BOARD OF CALIFORNIA

By: _____



Lorie G. Rice, Chair

Panel A

Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Termination of Probation of:

GEBRE GOBEZIE, M.D.
500 East Mountain View
Barstow, CA 92311

Physician and Surgeon's Certificate
No. A26738

Petitioner.

OAH No. N2004080205

PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on September 21, 2004.

Gebre Gobezie, M.D. (petitioner) was present and was represented by William F. Ritner, Attorney at Law, 325 W. Hospitality Lane, Suite 204, San Bernardino, CA 92408.

Mara Faust, Deputy Attorney General, Department of Justice, Health Quality Enforcement Unit, State of California, appeared pursuant to Government Code section 11522 in conjunction with Business and Professions Code section 2307.

Evidence was received and the matter was submitted for decision on September 21, 2004.

FACTUAL FINDINGS

1. The Administrative Law Judge was assigned by the Division of Medical Quality (Division), Medical Board of California (Board) to hear and decide this matter pursuant to Business and Professions Code section 2307. The Administrative Law Judge is duly designated in accordance with the provisions of Government Code section 11371.

2. The Board issued Physician and Surgeon's Certificate No. A26738 to petitioner on July 1, 1975.

3. The Board took disciplinary action against petitioner's license after an administrative hearing conducted on February 15, 16, 20, 21 and 22, 2001. The Board declined to adopt the Proposed Decision of the Administrative Law Judge and issued a Decision After Nonadoption (Decision), dated December 7, 2001, to become effective January 7, 2002. Petitioner filed a Petition for Writ of Administrative Mandamus in the Los Angeles County Superior Court, and the Court granted a stay of the Board's Decision. By Order dated May 2, 2002, the Court denied the writ and stated that the stay of the Board's Decision would remain in effect until May 21, 2002, which then became the effective date of the Board's Decision.

4. The Board's disciplinary action, pursuant to Business and Professions Code section 2334, subdivisions (b) and (c), on the grounds of unprofessional conduct, was based upon findings that petitioner had committed gross negligence and/or repeated acts of negligence in the care and treatment of four patients between March 1994 and March 2000..

Petitioner's license was revoked, revocation stayed, and petitioner placed on probation for five (5) years, subject to various terms and conditions. These terms and conditions included requirements that petitioner provide copies of the Board's Decision to hospitals or facilities where he practices medicine, as well as malpractice insurance carriers; complete a clinical training program such as the Physician Assessment and Clinical Education Program (PACE); complete a course in record-keeping; submit to monitoring of his practice; pay cost recovery of \$10,000; and comply with other standard terms and conditions of probation.

5. On May 17, 2004, petitioner signed a Petition for Penalty Relief requesting termination of probation, which was received by the Board on May 27, 2004. Petitioner has not previously applied for early termination of probation.

6. Petitioner completed a record-keeping course on October 25, 2002. He also completed a 40 hour intensive training program in gastroenterology at the PACE program in San Diego, California between February 3 and February 15, 2003, which included a two-day course in record-keeping, and three days of proctoring by a gastroenterologist. Petitioner felt that he benefited from his participation in the PACE program, particularly as it related to his record-keeping. Petitioner acknowledged that he had been "in a hurry in the past, and [he] did not pay much attention to this."

7. Raman S. Poola, M.D., acted as petitioner's practice monitor. In a Declaration dated September 15, 2004, Dr. Poola stated that he observed and evaluated petitioner and the records he kept in the practice of medicine as an internist gastroenterologist. In Dr. Poola's opinion, petitioner's record-keeping was "very good to excellent," and his medical care and judgments made in rendering patient care were "above average." In both cases, he deemed petitioner's conduct to be "well within the [sic] or in excess of the Standard of Care for such

physicians.” He concluded that petitioner was rehabilitated and no longer required monitoring or probation, in that he no longer posed a threat to his patients or the community.

8. A Probation Summary and Report was prepared by Elsa Alexander, Investigator Assistant, and approved by Glenda E. Finley, Supervising Investigator, on July 20, 2004. As of the date of that report, petitioner was in compliance with the terms of his probation, including the completion of continuing medical education. The report stated that petitioner owed \$2,874 for 2004 probation monitoring costs, and had a balance of \$5,830 remaining to be paid out of the \$10,000 assessed as the cost of investigation and prosecution of the underlying disciplinary matter. Ms. Alexander interviewed Senior Investigator Robert Durham, who was petitioner’s probation monitor for the first two years of probation. Investigator Durham told Ms. Alexander that he “supports [petitioner] in his effort to be released from Medical Board probation.”

9. Petitioner submitted letters of recommendation in support of his petition for early termination of probation written by three physicians who have practiced with petitioner for at least the past 10 years and who attested to petitioner’s skills and good character.

10. Petitioner is 72 years old and has been admitted to practice medicine in California for nearly 30 years. His once-busy practice decreased by about 80 percent after his license was disciplined and he was placed on probation. He seeks early termination of probation so that he may once again be a provider for various health-maintenance organizations and insurance companies such as Blue Shield.

11. Petitioner has demonstrated that he is capable of safely practicing as a licensed physician and surgeon without probationary conditions.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 states in pertinent part as follows:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the Division of Medical Quality for reinstatement or modification of penalty, including modification or termination of probation .

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the division may, for

good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the division. The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary....

2. Government Code section 11522 states as follows:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with

the particular agency contain different provisions for reinstatement or reduction of penalty.

3. California Code of Regulations, title 16, section 1361 states as follows:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Division of Medical Quality of the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (9th Edition/2003) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Division of Medical Quality of the Medical Board of California in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems.

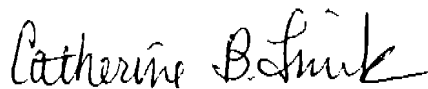
4. Petitioner submitted substantial and convincing evidence of rehabilitation. He has completed the PACE clinical training program as well as a course in record-keeping. Despite the fact that he has completed only two years of his five year probation, both his practice monitor and his Board probation monitor believe petitioner is rehabilitated and support his petition for termination of probation. However, as set forth in Finding 8, petitioner has not yet completed payment of cost recovery as required by the Board's Decision, and he owes \$2,874 in probation monitoring costs for 2004. He is otherwise in full compliance with the terms and conditions of his probation.

5. Good cause is established to terminate petitioner's probation at this time, provided he completes payment of cost recovery and probation monitoring for 2004.

ORDER

Petitioner Gebre Gobezie, M.D. shall remain on probation until such time as he completes full payment of the \$10,000 in cost recovery ordered by the Board, and he pays \$2,874 in probation monitoring costs for 2004. Upon proof of completion of said payments, the petition of Gebre Gobezie, M.D. for termination of probation shall be GRANTED.

Dated: 10-7-04



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings